

CORRESPONDENCE



IN REPLY REFER TO:
N1423 (MOJA)

May 25, 2001

Memorandum

To: Field Supervisor, Ventura Field Office, U.S. Fish and Wildlife Service

From: Superintendent, Mojave National Preserve, National Park Service

Subject: Request for Initiation of Consultation



The National Park Service (NPS) is requesting initiation of consultation under Section 7 of the 1973 Endangered Species Act, as amended, for the construction of a new second mainline by Union Pacific Railroad (UPRR) in Mojave National Preserve. The purpose of the project is to accommodate Amtrak passenger trains on a proposed Los Angeles to Las Vegas run. This project is proposed in two phases along approximately 19 miles of existing track from Kelso to Cima, California. The footprint of the project is largely confined to a relatively wide existing berm that currently supports the mainline, associated facilities and five sidings. Twenty-six bridges and 14 culverts along the project length must also be widened to facilitate placement of the new second mainline. Phasing of the construction is based on an operating agreement between UPRR and Amtrak to provide daily passenger service between Los Angeles, California and Las Vegas, Nevada. Total construction time for both phases is 530 construction days. The construction would enable an average of two passenger trains per day in addition to the current freight traffic of approximately 35 trains per day.

A Biological Assessment (BA) for the project has been prepared to analyze impacts resulting from the construction activities on listed threatened and endangered species. An Environmental Assessment is also being prepared and will be released for public comment during this consultation period. The BA includes a detailed construction operations plan, as well as results from field surveys conducted for threatened and endangered plants and animals. The BA concludes "no effect" on:

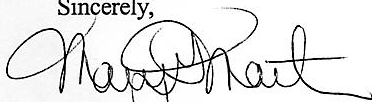
Mojave Tui Chub (*Gila bicolor mohavensis*)
 Arroyo Southwestern Toad (*Bufo microscaphus californicus*)
 California Red-Legged Frog (*Rana aurora draytonii*)
 Southwestern Willow Flycatcher (*Empidonax traillii extimus*)
 Least Bell's Vireo (*Vireo bellii pusillus*)
 Gambel's Watercress *Rorippa gambellii*
 Marsh Sandwort (*Arenaria paludicola*)

Based on field investigations and review of existing information, the BA concludes that the proposed project could adversely affect the federally listed desert tortoise (*Gopherus agassizii*), which is also listed by California. Measures to avoid and minimize impacts to the desert tortoise and designated critical habitat are detailed in the construction operations plan and BA. In addition, compensation for disturbed

lands in critical habitat have been calculated and would be required of the applicant if a permit is issued. A total of 100 acres of previously disturbed and 10 acres of undisturbed habitat would be impacted by the construction. The NPS would require 450 acres of equivalent undisturbed compensation lands be purchased and donated for desert tortoise conservation purposes, as well as restoration of the disturbed lands not used for railroad operations.

If you have any questions or comments please feel free to contact Danette Woo at (760)255-8841 or Dennis Schramm at (760)255-8840.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Martin", written over a horizontal line.

Mary Martin
Superintendent

Attachment (Biological Assessment of May 18, 2001)

cc: George Walker, USFWS, Barstow (w/copy of BA)
Becky Jones, CA Dept of Fish & Game (w/copy of BA)
Joel Adams, UPR, Sacramento
Kevin Collins, HDR, Inc. ✓

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MOJAVE NATIONAL PRESERVE

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

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MOJAVE NATIONAL
PRESERVE

August 8, 2001

Memorandum

To: Superintendent, Mojave National Preserve, National Park Service, Barstow, California

From: *Acting* *Carl Z...* Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California

Subject: Acknowledgment of Request to Initiate Formal Consultation for the Construction of a Mainline by Union Pacific Railroad in the Mojave National Preserve, San Bernardino County, California (1-8-01-F-36)

This memorandum acknowledges your letter, dated May 25, 2001, and received in our office on May 29, 2001, requesting initiation of formal consultation, pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Act). The consultation concerns the construction of a new second mainline by Union Pacific Railroad (UPRR) in the Mojave National Preserve and its effects on the federally threatened desert tortoise (*Gopherus agassizii*) and its designated critical habitat.

All information required of you to initiate consultation was either included with your letter or is otherwise accessible for our consideration and reference. We have assigned log number 1-8-01-F-36 to this consultation. Please refer to that number in future correspondence on this consultation. The regulations which implement section 7(a)(2) allow the Service up to 90 days to conclude formal consultation with your agency and an additional 45 days to prepare our biological opinion (unless we mutually agree to an extension). Therefore, we expect to provide you with our biological opinion on or before October 11, 2001.

As a reminder, section 7(d) of the Act requires that, after the initiation of formal consultation, the lead federal agency may make no irreversible or irretrievable commitment of resources that could preclude the formulation or implementation of reasonable and prudent alternatives to avoid jeopardizing the continued existence of endangered or threatened species or destroying or modifying its critical habitat.

If you have any questions or concerns about this consultation or the consultation process in general, please call Tim Thomas of my staff at (760) 255-8890.



IN REPLY REFER TO:

L3027

United States Department of the Interior

NATIONAL PARK SERVICE

Mojave National Preserve
222 East Main Street, Suite 202
Barstow, California 92311



August 31, 2000

Daniel Abeyta
Acting State Historic Preservation Officer
Office of Historic Preservation
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001

Dear Mr. Abeyta:

Enclosed please find a copy of the *Cultural Resource Survey, Union Pacific Railroad New Second Mainline, Kelso to Cima, California* prepared for the National Park Service by HDR, Inc on behalf of project proponent Union Pacific Railroad. As provided for under 36 CFR Part 800, we seek your review of the enclosed material.

The resource survey includes a literature review, record search, and field survey for a 19-mile section of Union Pacific Railroad right-of-way currently being considered for the proposed installation of a new second mainline. Other environmental documents including environmental and biological assessments are also underway.

Please direct any cultural resource questions to Cultural Resource Specialist Joan DeGraff of my staff at (760) 255-8830. We look forward to your review comments on this document.

Sincerely,

Mary G. Martin
Superintendent

cc:

Robbyn Jackson, Pacific Great Basin Support Office
Susan J. Wells, WACC
Kevin Collins, Project Manager, HDR Engineering, Inc, 500 108th Avenue, N.E.,
Suite 1200, Bellevue, Washington, 98004-5538
Dave Hanna, HDR Engineering, Inc, 271 Turn Pike Drive, Folsom, CA, 95630
Kevin Hicks, Union Pacific Railroad, Room 1030, 1416 Dodge Street, Omaha, NE, 68179-1000
Chris Stubbs, Mojave National Preserve

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STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS, Governor

OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION
P.O. BOX 942898
SACRAMENTO, CA 94298-0001
(916) 653-6524 Fax: (916) 653-9824
calshpo@ohp.parks.ca.gov



October 10, 2000

Reply To: NPS000911A

Ms. Mary Martin, Superintendent
National Park Service
Mojave National Preserve
222 East Main Street, Suite 202
Barstow, CA 92311

Project: **Union Pacific Railroad New Kelso to Cima Second Mainline,
Mojave National Preserve, San Bernardino County, California**

Dear Ms. Martin:

In accordance with 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act, you have made findings of National Register eligibility and effect for properties located within the Area of Potential Effects (APE) of the undertaking cited above. You have asked for my comments on these findings.

UNDERTAKING APE AND IDENTIFYING HISTORIC PROPERTIES

Your delineation of the undertaking's APE and efforts to identify historic properties within this APE are satisfactory.

DETERMINATIONS OF NATIONAL REGISTER ELIGIBILITY

Archaeological site CA-SBR-1910 H – I agree that the portion of this linear resource (i.e., the historic Union Pacific Railroad (UPRR) route between Daggett, California and the California-Nevada state line near Primm, Nevada) within the undertaking's APE does not meet any of the National Register Criteria set forth at 36 CFR 60.4 because the number, extent and nature of modifications to the embankment, tracks, culverts, and bridges within the past 50 years have removed or significantly altered the integrity of this portion of the railway, which, as a functioning modern facility is a product of maintenance processes of reconstruction and reconfiguration over time.

Archaeological site CA-SBR-3054 H – I agree that, for purposes of Section 106, the portion of this site that lies within the APE is best characterized as an archaeological site. As such, I concur in the determination that it is eligible for inclusion in the National Register of Historic Places under Criterion D for the reasons stated in the report entitled "Cultural Resources Survey, Union Pacific Railroad New Second Mainline, Kelso to Cima, California" (HDR, Inc., June 16, 2000).

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October 10, 2000
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Archaeological site CA-SBR-10,137 H -- Because too little is known about this site to evaluate its NRHP eligibility, the author of the report cited above recommended that, "for present purposes, the portion of this site that lies within the APE be presumed eligible for the NRHP and treated as an historic property" (pp. 24-25). At this time I am unable to agree or disagree with this finding.

DETERMINATION OF EFFECT

The report concludes that implementation of the proposed project would not affect either site CA-SBR-3054 H or CA-SBR-10,137 H, both presumed eligible for the NRHP and proposed for treatment as historic properties for purposes of Section 106. Although not stated in your August 31, 2000 letter, I assume that this reflects your conclusion that the undertaking's effects do not meet the Criteria of Adverse Effect [36 CFR 800.5(a)(1)]. The rationale behind this finding is that both resources are archaeological sites and, as such, are likely to be relatively immune to the temporary vibration and noise created by construction equipment, which in the site vicinities are expected to be minimal and less than that already generated by the frequent passage of large freight trains. Because the portion of site CA-SBR-3054 H within the APE is situated east of the existing embankment and all fill-placement and other construction activities in the vicinity would be atop the east-side embankment and on the west side of the tracks, it is proposed that any possible intrusions to the site could be prevented by having a qualified archaeologist mark the site limits in this vicinity. Likewise, at site CA-SBR-10,137 H, because surface manifestations of the site were observed west of the existing embankment, while all construction activities are to be restricted to the embankment itself, it was proposed that any possible intrusions to the site could be prevented by having a qualified archaeologist mark the site limits in this vicinity.

I do not concur with your determination of "no effect" because it is inconsistent with the regulations set forth at 36 CFR Part 800.

In accordance with those regulations the NPS, in consultation with the State Historic Preservation Officer (SHPO), may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of adverse effect. Justification for considering effects of an undertaking not to be adverse include modification of the project or the imposition of conditions such as the establishment of restricted areas or archaeological monitoring to avoid adverse effects [see 36 CFR § 800.5(b)].

The intent of § 800.5(b) is to afford the SHPO the opportunity to suggest changes in a project or to impose conditions so that adverse effects can be avoided and thus result in a no adverse effect determination. This section was written to emphasize that a finding of no adverse effect is only a proposal by the Agency

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October 10, 2000
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Official that it submits to the SHPO in writing for review.

Because I consider your finding of no historic properties affected inconsistent with the regulations, I propose that a finding of no adverse effect would be more appropriate. I am prepared to concur with such a finding if the following conditions are implemented so that effects of the undertaking that would otherwise be adverse, will not be adverse:

1. A pre-construction tour of the APE where sites CA-SBR-3054 H and CA-SBR-10,137 H are situated will be conducted, attended by a qualified historical archaeologist, the UPRR construction manager, and the designated NPS point-of-contact. Work area limits and access routes will be identified during this tour in order to confirm the feasibility of preventing intrusion upon either archaeological site.
2. Construction contract specifications, including all subcontractor agreements, will contain language specifically defining work areas and restricting access routes to the existing embankment, existing dirt or hard-surfaced roads, and disturbed washes adjacent to bridge and culvert construction locations.
3. Prior to any activities associated with the construction of the project, the boundaries of both presumptive historic properties (i.e., CA-SBR-3054 H and CA-SBR-10,137 H) will be marked by a qualified historical archaeologist using brightly-colored plastic construction fencing or some similarly clearly visible means to clearly mark the site limits and thus help prevent inadvertent intrusion by equipment or materials or construction personnel.
4. An archaeological monitor will be present during all construction work taking place adjacent and within close proximity to the two sites. Archaeological monitoring will be conducted by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-39) in Historical Archaeology.
5. Construction contract specifications will contain language specifying the procedures to be followed in the event that historic properties are discovered or unanticipated effects on historic properties are found during project implementation. These procedures will include immediate cessation of construction activities in the immediate area of a find and within a reasonable buffer area and immediate notification of the designated NPS point-of-contact. Pursuant to §800.13(b)(3) the SHPO should be contacted with 48 hours of the discovery and the steps prescribed therein fully implemented. Construction at the find location should not resume until authorized by NPS, following consultation with the SHPO.

The foregoing conditions are sufficient to warrant my concurrence in your no adverse effect determination if you agree to impose them as conditions on the undertaking [36 CFR § 800.5(b)]. Please indicate your agreement by executing

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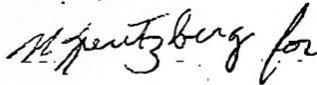
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Mary G. Martin
October 10, 2000
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the signature block below. My receipt of a copy of this letter bearing your signature will constitute satisfactory evidence of Section 106 compliance for this undertaking.

Your consideration of historic properties in the project planning process is appreciated. If you have any questions, please call staff archaeologist Charles Whatford at (916) 653 - 2716 or e-mail at cwhat@ohp.parks.ca.gov

Sincerely,



Daniel Abeyta, Acting
State Historic Preservation Officer



Mary G. Martin, Superintendent
Mojave National Preserve

Date: 10/18/00

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IN REPLY REFER TO:
H30 (MOJA)

United States Department of the Interior

NATIONAL PARK SERVICE

Mojave National Preserve
222 East Main Street, Suite 202
Barstow, California 92311

File

July 27, 2001

Dr. Knox Mellon
State Historic Preservation Officer
Office of Historic Preservation
Department of Parks and Recreation
P.O. Box 942896
Sacramento, California 94298-0001

Project: Union Pacific Railroad New Kelso to Cima Second Mainline, Mojave National Preserve, San Bernardino County, California (Reference: NPS000911A)

Dear Dr. Mellon:

In a letter dated October 10, 2000, you commented on our proposed findings of National Register Eligibility and effect on properties located within the Area of Potential Effects (APE) of the undertaking cited above. Returning a signed copy of that letter on October 18, 2000, I agreed to impose on the undertaking of those conditions contained within the letter that you had proposed as appropriate to a finding of no adverse effect.

This letter concerns a minor alteration in project description that I propose would have no adverse effect upon historic archaeological site CA-SBR-3054H, which you agreed was eligible for inclusion in the National Register under Criterion D. The following resource description is from the original report prepared by HDR, dated June 16, 2000.

This trinomial designates the town of Cima, which is known today as a small community and occasional stop on the Union Pacific line.

The site was recorded in 1977 by the BLM California Desert Project, as reflected by an ASSR and an HSSF. The ASSR describes the site as "1904 railroad hamlet with wye track, [and a] 1920 town with a boarding house, cabins, a store and a post office." The HSSF identifies the site as a railroad town, and indicates the presence of a "store, post office, etc."

The HSSF also contains a general summary and discussion of the route's history, referenced to Bard (1972), Gudde (1949), and Myrick (1963), which states:

Around 1920 the town consisted of a boarding house (with cabins made from railroad ties), a store and a post office. The town's basic function was to serve as a railroad siding and as a commercial center for ranchers and miners in the vicinity (Bard 1972:84). The town has a wye (a Y-shaped track) so the helper engines could turn around and return to Kelso.

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In addition, the HSSF cites Cima as “a typical example of a railroad siding becoming the nucleus of a settlement.” The store and post office are noted as having been replaced by a new building in 1962.

As a result of the present study, a more detailed picture can be presented of the portion of site CA-SBR-3054H that exists within the APE. Within a small, central area between Kelso-Cima Road and the west-side embankment footing (i.e., northwest of the tracks), there is a low-density scatter of twentieth century refuse, of which most is over 50 years old. Adjacent to the east-side embankment footing (i.e., southeast of the tracks) and defining the site’s southwestern limit, there is an approximately 600- by 250-foot area that contains ten features and a dense refuse scatter comprised mostly of material over 50 years old. This area’s long axis parallels the track, and each of the ten features is oriented squarely with respect to the same axis.

The features are two concrete foundation slabs tied together by a section of sidewalk, a concrete foundation slab with remnants of a brick-and-concrete chimney, a concrete foundation slab with modern PVC pipe; a concrete foundation slab with a recent metal pipe in its center, three other foundation slabs (one of them partly disturbed), two sets of four concrete footings arranged in a square, and a standing water tower (steel tank on steel frame tower). The refuse scatter continues northeast of this feature-rich area, but at considerably lower density, for about 925 additional feet and at a width extending only about 30 to 50 feet out from the east-side embankment footing.

These features are clearly associated with Cima’s history as a railroad hamlet and regional economic center. The foundation slabs most likely once supported Union Pacific-built worker housing, some of which is known to have seen continued use from the early 1900s until recent times. The large majority of refuse present within the APE is associated with the town’s and the railroad’s history, and the denser portion of the scatter may contain distinct trash features that could be directly associated with individual concrete foundations.

Effects of project, as then defined, were evaluated in the June 16, 2000 report, as follows:

Design plans for the proposed project indicate that there would be no direct impacts to this site. All cultural materials within the APE are situated east of the existing embankment, while all fill-placement and other construction activities in the vicinity would be on top of the east-side embankment and on the west side of the tracks. The east side also would not be needed for access. Fill materials would be placed by rail, and construction equipment and personnel would access work areas via the existing embankment and possibly via graded dirt roads from Kelso-Cima Road. There is some possibility that an east-side locale north of the cultural materials may be desired for use as a staging area. Provided that a qualified archaeologist marks site limits in this vicinity, any possible intrusions could be readily prevented.

The new project description would place the proposed Earthwork Staging Site 254.3 on the east-side locale north of the cultural materials, as was initially suggested might occur. As is shown by the attached map (Figure 1), neither the proposed staging area nor the existing dirt road to be used for access would directly impact the cultural materials. However, some measure of effect may still occur, due to the presence of construction work near those materials.

I propose that your prior finding of no adverse effect would remain appropriate for site

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CA-SBR-3054H, because the same five conditions in your letter would be implemented per my agreement to those conditions as indicated by my signature on October 18, 2000.

I will appreciate your written reply upon this proposed finding of no adverse effect. Please feel free to direct any questions to Danette Woo of my staff at (760) 255-8841.

Sincerely,



Mary G. Martin
Superintendent

Attachment

cc: Kevin Collins, HDR ✓

bcc: Danette Woo -

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